

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

May 9, 2007
9:00 a.m.

Members present: Councilors Bradley, Bridges, Butler, Christie, Cowan, Czysz, Densberger, Lussier, Lyons, Lynch, Rastaulis, Patenaude, and Varotsis

Members absent: Councilors Barrett, Dupee, Phillips

John Bridges, Chairman, called the meeting to order at 9:00 a.m.

1. Approval of Minutes of April 11, 2007 Meeting

A motion was made by Councilor Bradley to accept the minutes of the April 11, 2007 meeting with the addition of Nancy Christie as present at the meeting. The motion was seconded by Councilor Lussier. The Council unanimously voted to approve the minutes.

2. Approval of State Aid Grants

Steve Snell of the Wastewater Engineering Bureau requested approval of one new state aid grant as set forth in a memo from Bureau Administrator John R. Bush, P.E. to Harry T. Stewart, P.E., Director, Water Division dated April 20, 2007.

Councilor Bradley moved to approve the grant and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Cowan seconded the motion and it was unanimously voted.

WHEREAS, The following municipality has applied to the Department of Environmental Services, under the provisions of RSA 486, for a grant in the amounts listed to aid in the defraying of the costs resulting from the construction of sewage disposal facilities, as defined in said Chapter:

<u>MUNICIPALITY</u>	<u>PROJ. NO.</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT</u>
Laconia	C-749	Roller Coaster Road Sewer	\$ 335,785

WHEREAS, The Department of Environmental Services has examined said application as to the eligibility of the construction costs for State Contributions; and

WHEREAS, The Water Council finds that said project is intended to control or reduce pollution in the surface waters of the State, as defined in RSA 485-A.

NOW THEREFORE, The Water Council finds that all of the provisions of RSA 486 have been met by said applicant, and respectfully recommends that the Governor and Executive Council approve said grant and authorize payment thereof

through the Department of Environmental Services as provided for in said Chapter.

3. **Status of Appeals**

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council.

- **Docket No. 03-14 WC - Gerald A. Bell – Water Division Denial of Application for Waiver of Septage Rules**
Stay remains in effect pending the resolution of the declaratory judgment action.
No action is required by the Council.
- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**
Stay remains in effect.
No action is required by the Council.
- **Docket Nos. 04-18 WC and 04-19 WC – Appeal of Thaddeus Dymon and Town of Newport**
A stay remains in effect pending the resolution and a final decision is expected soon from Sullivan County Superior Court.
No action is required by the Council.
- **Docket No. 05-21 WC - Appeal of Save Our Groundwater**
The Council voted unanimously to decline to accept this appeal finding that the Appellant(s) failed to establish standing in their Notice of Appeal. A written Decision and Order will be issued.
No action is required by the Council.
- **Docket No. 05-22 WC - Appeal of Town of Nottingham**
The Council voted unanimously to decline to accept this appeal finding that the Appellant(s) failed to establish standing in their Notice of Appeal. A written Decision and Order will be issued.
No action is required by the Council.
- **Docket No. 06-04 WC - Appeal of Andrews and Carpenter**
On April 11, 2007 the Decision & Order to deny the appeal issued.
Deadline to file for reconsideration is May 11, 2007.
No action is required by the Council.
- **Docket No. 06-08 WC – Conservation Law Foundation**
At the January 10, 2007 Appeal Hearing the Council votes unanimously to dismiss.
Written Decision and Order not yet issued.
No action is required by the Council.
- **Docket No. 06-13 WC – Administrative Order – Shane Forest**
Stay remains in effect. No action is required by the Council.
- **Docket No. 06-15 WC – Administrative Order – Andrew P. and Christine J. Lane**

On April 23, 2007 the Appeal is withdrawn.
No action is required by the Council. This Appeal is closed.

- **Docket No. 07-04 WC – Administrative Order – Gerald A. Bell**

On April 13, 2007 Notice of Appeal filed on the 30th day.

Receipt of Appeal letter distributed on April 19, 2007.

On April 20, 2007 Attorney Maureen Smith files an Appearance on behalf of DES.

DES files a Motion to Dismiss.

On April 30, 2007 Appellant files Objection to Motion to Dismiss. Appellant also files Motion to Stay Cessation Order Contained in AO WD 07-004.

Councilor Cowan made a motion to accept the Notice of Appeal. Councilor Butler seconded the motion. The Council unanimously voted in favor of this motion.

Councilor Patenaude made the motion to grant the Motion to Stay the Cessation Order. Motion died for lack of a second.

Councilor Densberger moved to deny the Appellant's Motion to Stay the Cessation Order contained in WD 07-004. Councilor Lyons seconded the motion. Motion passed with a majority vote.

Councilor Bradley was appointed Hearings Officer for this Appeal.

- **Docket No. 07-05 WC – RRJ Properties Limited Partnership**

Notice of Appeal filed on April 24, 2007, the 29th day.

On April 25, 2007 Receipt of Appeal letter distributed.

Councilor Varotsis made a motion to accept the Notice of Appeal. Councilor Lyons seconded the motion. The Council unanimously voted in favor of this motion.

Councilor Cowan was appointed Hearings Officer for this Appeal.

4. Rules:

Proposed Revised – Env-Wq 200 Procedural Rules

Gretchen Hamel, Administrator of the DES Legal Unit, presented the Council's procedural rules. The committee met and the changes are reflected in the Chapter 100 rules distributed.

Definitions were reviewed of a 'Pre-Hearing Conference and a Settlement Discussion. A Pre-Hearing Conference is specifically for the purposes of identifying witnesses, exchanging information, identifying exhibits, talking about the length of time each party needs to present testimony, and who their witnesses are going to be. The Pre-Hearing Conference is held with the appointed Hearing Officer. A Settlement Discussion is a meeting that is confidential, not on the record, and the Hearing Officer is not present. This is an attempt to agree without going to a hearing.

Council Attorney, Anthony Brooks, at the Attorney General's office has received each revision.

It was also noted that the Water Council Chairman and Vice Chair are set by statute, not up to vote by the Council.

Councilor Varotsis made a motion to authorize the Department to move forward with the regular rule making procedure. Councilor Bradley seconded the motion. The Council unanimously voted in favor of this motion.

The public hearing was set for the July 11th Water Council meeting.

Interim rules are on the JLCAR agenda for May 18, 2007.

Proposed Revised – Env-Wq 303 Rules – Groundwater Sources of Bottled Water
Steve Roy and Tim Nowak shared the changes that have been made since they were first shared at the April meeting. The amendments now incorporate a wetlands protection program requirement, a suspension and revocation approval, also adds a pointer to the new water conservation rules that were adopted in 2005.

Councilor Densberger moved to authorize the Department to continue with the rule making process. Councilor Lussier seconded the motion. The Council unanimously voted in favor of this motion.

5. Legislative Update by Director Harry Stewart

Director Stewart referred to the hand out “DES-Related Bills in the 2007 Session”. Those going from the House to the Senate are:

HB 2 – included 2 fee increases. 1) Wetlands Program Fee, \$.10 to \$.20 per square foot for dredge and & fills. 2) Alteration of Terrain permits, increased by 2.5 the current application fee with a time frame for processing the permits.

HB 61 designates the Ammonoosuc River into the Rivers Management Protection Program.

HB 72 gives the Winnepesaukee River Basin Program billing services revisions

HB 219 adds a forester or someone equivalent to the Wetlands Council

HB 283 provides funding for the Dam Maintenance Fund from the un-refunded road tolls

HB 318 large ground water withdrawals regulations and permitting clarification

HB 458 enables public water suppliers to replace wells adjacent to the original

HB 459 a well tagging program at installation

HB 648 comprehensive flood management plan commission formed. Also a review of practices to see if there are improvements to be made. Also have an independent consultant come and evaluate the dam management practices during flood events across the board.

HB 664 – FN to increase annual dam registration and permit application fees to cover inspection program, follow-up compliance of deficient dams, 2 more positions, and make program sustainable for the future.

HB 699 sludge bill that establishes a commission to look at alternatives to land application for biosolids. This also requests the commission to study the viability for a state built bioreactal land fill.

Rene Pelletier, Assistant Director, reviewed the bills relating to the Comprehensive Shoreline Protection Act. At this time it looks like 3 of the bills will be put into one.

HB 663 will stay on its own. This creates a permit system for the Shoreland Protection Act. The new fee will support 6 new staff, will be effective March 2008, and is a non-lapsing fund.

HB 383, 665 & 857 these bills now have 1) an impervious component in the shoreline zone, 4th order stream, river, pond, or lake. 2) inclusion of 3rd order streams effective as of July 1, 2009 or July 1, 2011. This adds another 2,132 lineal miles of new river to be included. 3) establishing a 50' x 50' foot grid with a tree count point system to replace the 50% basal area/20 year period system. Penalties for non-compliance are still the same.

6. Other Business

Malcolm B. asked about the permit fee for the 106 grants. Harry S. explained the EPA has established a rule for the adequate NPDS permit fee program. If the 106 monies go up then excess would be distributed to the states with adequate permit fee programs. NH has no NPDS permits or fee, so would be automatically penalized. DES and others have written letters in opposition. Most states are in opposition as it is telling the states how they should fund their state's programs.

7. Next Meeting

The next meeting is scheduled for June 13, 2007.

8. Adjournment

A motion was made by Councilor Varotsis to adjourn. The motion was seconded by Councilor Densberger and unanimously voted.